

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

**ANGEL DAVID MORALES
VALLELLANES,
Plaintiff,**

v.

**JOHN POTTER, UNITED STATES
POSTMASTER GENERAL, ET ALS.,
Defendants.**

CIVIL NO. 97-2459 (JAG)

**DAMAGES BASED ON
RETALIATION AND
DISCRIMINATION; PROHIBITED
PERSONNEL PRACTICES;
UNFAIR LABOR PRACTICES;
BREACH OF COLLECTIVE
BARGAINING AGREEMENT**

**TRIAL BY JURY IS HEREBY
REQUESTED**

**MOTION TO REQUEST URGENT ORDER TO COMPLY WITH
DISCOVERY AGAINST DEFENDANT UNITED STATES POSTAL SERVICE
FOR THE TAKING OF DEPOSITION OF CARMEN ROSA**

COMES NOW, plaintiff Angel David Morales-Vallellanes through his legal counsel and very respectfully inform this Honorable Court:

1. Former EEO Counselor Investigator Carmen Rosa is an important witness who played a very sensitive role on Plaintiff's four (4) EEO complaints filed as she was at all time his EEO Counselor investigator.
2. Said witness was always on defendant USPS witness list. As evidence of the above five (5) years ago on April 5, 1999 codefendants USPS and US Department of Labor filed a "Codefendants' Witness List" (Docket #41) which included former EEO Counselor investigator Carmen Rosa as one of said parties witnesses.
3. In the above reference motion (Codefendant's Witness List") defendant USPS included the following information regarding the witness testimony:

“4. **Carmen Rosa** and **Frank Girau**, EEO Counselor and Investigator-They are Postal Service employees and they will testify as to EEO’s procedure at the Postal Service and their investigation and/or intervention with plaintiff at the EEO level, as well as to the four (4) EEO case files the plaintiff has with the Postal Service. The direct examination is expected to take 30 minutes for each witness.”

4. On January 23, 2004 as ordered by this Honorable Court the parties filed a Joint Discovery Schedule (Docket #173) in which their prospective witnesses were announced.

5. On said document defendant USPS once again included former EEO Counselor Investigator Carmen Rosa on its witness list and the parties agreed upon the following:

“4. Said witnesses are subject to deposition to be taken by either party during the designated discovery period.”

6. On a letter dated March 24,2004 Plaintiff notified defendant USPS his interest to depose former EEO Counselor Investigator Carmen Rosa during the remaining days of March. (See Exhibit I)

7. Due to the fact that the undersigned did not received a response to schedule the depositions, particularly the taking of deposition of Carmen Rosa, Plaintiff did not had other option but to schedule the deposition by himself and notify the dates and time to defendant USPS through its legal representation the US Attorney on April 6, 2004.

8. Last Wednesday April 7, 2004 the undersigned received a call from the US Attorney to oppose the taking of deposition from EEO Counselor Investigator Carmen Rosa, also he expressed the possibility to withdraw her from USPS witness list.

9. On this Monday April 12, 2004 morning the undersigned became aware that last Thursday April 8, 2004 (a holiday) at 1:26 p.m. a letter from defendant USPS’s legal representation

the US Attorney was received in which notified "...the telephone, we are dropping Carmen Rosa defendant's witness list. In addition, ...". (See Exhibit II)

10. The taking of deposition of former EEO Counselor Investigator Carmen Rosa has been scheduled for next Wednesday April 14, 2004 from 9:00 a.m as its was previously notified to defendants USPS legal representation.
11. The actions by defendant USPS as the one above clearly exemplifies its recklessness; its noncompliance with discovery orders its obstruction to discovery; and its unjustified delays.
12. The tardiness of defendant USPS notification to drop former EEO Counselor Investigator Carmen Rosa not by motion but through a letter by fax during an extended weekend just two (2) days before the taking of deposition is not only done with bad faith but with the uncertainty of not informing this Honorable Court of an amendment to the Joint Discovery Schedule filed almost three (3) months ago.
13. The action of defendant USPS has put Plaintiff in a precarious position since now said witness (former EEO Counselor Investigator Carmen Rosa) has to be subpoenaed for the taking of deposition, that is particularly important due to the fact that according to the Honorable Court discovery order "must be completed no later than June 1, 2004."
14. It is highly suspicious that only days before the taking of deposition of former EEO Counselor Investigator Carmen Rosa defendant USPS drops her from the witness list meanwhile said party keeps EEO Counselor Investigator Frank Girau in the witness list.

WHEREFORE, it is respectfully requested from this Honorable Court to take notice of the above and order defendant USPS to provide former EEO Counselor Investigator Carmen Rosa for the taking of deposition as it is scheduled next Wednesday April 14, 2004 from 9:00 a.m., also it is respectfully requested to this Honorable Court to impose sanctions to defendant USPS for the

obstruction and unjustified delays in discovery.

RESPECTFULLY SUBMITTED.

I HEREBY CERTIFY that on April 12, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: **Fidel A. Sevillano-Del Río, Esq.**, Assistant U.S. Attorney, Federico Degetau Federal Build., 150 Carlos Chardón Av., Hato Rey, Puerto Rico 00918.

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